

BILL NO. **85-50**

AS AMENDED

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

BILL NO. 85-50 (AS AMENDED)

Introduced by Council President Hardwicke at the
request of the County Executive

Legislative Day No. 85-27 Date October 1, 1985

AN EMERGENCY ACT authorizing Harford County, Maryland, to participate in a resource recovery facility to be located in Harford County, Maryland, that has been developed by Northeast Maryland Waste Disposal Authority; making certain findings concerning the County's participation; providing for the execution of and approving the form of a multi-year Waste Supply Contract between the County and the Authority that obligates the County to deliver specified amounts of solid waste and pay tipping fees to provide for the cost of the disposal of such solid waste, whether or not the solid waste is delivered; and generally providing for and determining various matters in connection with the participation of the County in the resource recovery project.

By the Council, October 1, 1985

Introduced, read first time, ordered posted and public hearing scheduled

on: October 24, 1985

at: 7:00 P.M.

By Order: Angela Markowski, Secretary

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on October 24, 1985 and concluded on October 24, 1985.

Angela Markowski, Secretary

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

BILL NO. **85-50**

AS AMENDED

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2 WHEREAS, Northeast Maryland Waste Disposal Authority (the
3 "Authority") was created by and exists under Chapter 871 of the
4 Laws of Maryland of 1980, as amended, (the "Act"), in order to
5 assist certain participating political subdivisions of the State
6 of Maryland, other public entities and the private sector of the
7 economy to provide adequate solid waste disposal facilities; and

8 WHEREAS, the Authority and the County have determined that
9 there is a need for a resource recovery facility (the "Facility")
10 in Harford County designed to process approximately 81,000 tons
11 per year (the "Guaranteed Annual Tonnage") of solid waste. In
12 order to assist the County with the disposal of solid waste, the
13 Authority has offered to enter into a long-term, solid waste
14 disposal agreement (the "Waste Supply Contract") with the County.
15 The Waste Supply Contract will require the County to deliver
16 specified quantities of solid waste to the Facility for disposal
17 by the Authority or its designee; and

18 WHEREAS, the Authority intends to enter into contractual
19 arrangements with a single, qualified owner/operator of the
20 Facility in order to provide for the design, construction,
21 equipping, start-up, testing, ownership, and operation of the
22 Facility by such entity; and

23 WHEREAS, as a result of the competitive procurement
24 process, the Authority received a proposal from a group of
25 companies consisting of Consumat Systems, Inc. ("Consumat") and
26 RECO Industries, Inc. ("RECO") for the ownership, design,
27 construction and operation of the Facility. Consumat and RECO
28 (together, the "Selected Vendor") propose to form a limited
29 partnership (the "Company") that would be responsible for the
30 design, construction, equipping, start-up, testing, ownership and
31 operation of the Facility; and
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2 WHEREAS, the Authority undertook a two-step process to
3 select a single private entity which is financially and
4 technically capable of designing, constructing and operating the
5 Facility. The Authority issued a Request for Qualifications in
6 order to select qualified firms with which to enter into
7 competitive negotiations, reviewed the responses to its Request
8 for Qualifications and determined on May 23, 1983 that two of the
9 groups of vendors which responded to the Request for Qualifica-
10 tions (the "Qualified Vendors") should be invited to participate
11 in simultaneous competitive negotiations with respect to the
12 design, construction and operation of the Facility. Beginning in
13 August, 1983, the Authority held a series of competitive
14 negotiation sessions with each of the Qualified Vendors based
15 upon various technical and contractual documents prepared by each
16 of the Qualified Vendors. Following several months of competi-
17 tive negotiations, the Authority, by resolution adopted on
18 February 21, 1984, invited Consumat and RECO (the "Selected
19 Vendor") to participate in exclusive negotiations for the award
20 of the negotiations for the award of the Facility. Since that
21 time, the Authority and the Selected Vendor have conducted
22 exclusive, extensive and detailed negotiations on agreements
23 providing for the design, construction and operation of the
24 Facility; and

25 WHEREAS, as a result of these negotiations, it has been
26 determined that the project will be developed through the
27 agreements (the "Project Documents"), specified in this Act as
28 follows:

29 (1) A Waste Supply Contract between the Authority and the
30 County, which provides for the disposal by the Authority of
31 specified quantities of solid waste to be delivered by or on
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1 behalf of the County and for the payment by the County of the
2 disposal costs therefor through tipping fees, whether or not the
3 County delivers such solid waste.

4 (2) A Service Agreement between the Authority and the
5 Company (the "Service Agreement"), which provides for the design,
6 construction, equipping, start-up, testing, ownership and
7 operation of the Facility by the Company and the disposal of the
8 solid waste provided to be delivered thereunder at the Facility
9 (or facilities other than the Facility in the event processing of
10 solid waste cannot occur at the Facility).

11 (3) A Facility Site Lease between the Authority (or its
12 designee) and the U. S. Army, which provides for the leasing by
13 the Army of the site on Aberdeen Proving Grounds on which the
14 Facility will be located.

15 (4) A Steam Purchase Contract between the Army and the
16 Authority (the "Steam Purchase Contract"), which provides for the
17 sale to the Army of the steam produced by the Facility.

18 (5) A Utilities Agreement that provides for the sale by
19 the Army of water and sewage utility services needed at the
20 Facility; and

21 WHEREAS, the Authority indicated its commitment, by
22 resolution adopted on June 18, 1982, to issue its bonds, notes or
23 other obligations (the "Bonds") in order to finance all or a
24 portion of the costs of the Facility. The Bonds will be issued
25 pursuant to the Authority's "private activity bond allocation."
26 The sale of the Bonds will be facilitated by the prior approval
27 by the County of the project and the Waste Supply Contract. The
28 Authority intends to develop the financing documents necessary
29 for the sale of the Bonds. These financing documents may include
30 (without limitation) a loan agreement, a trust indenture, a
31 mortgage, and an official statement (collectively, the "Financing
32 Documents"); and

1 WHEREAS, Sections 520 and 524 of the Charter of Harford
2 County, Maryland, require that all agreements and payments
3 thereunder which would extend beyond the current fiscal year be
4 authorized by legislative act.

5 NOW, THEREFORE,

6 Section 1. Be It Enacted By The County Council of Harford
7 County, Maryland, that it is hereby found and determined that:

8 (a) The design, construction, equipping, ownership and
9 operation of the Facility and the disposal of the Guaranteed
10 Annual Tonnage, in the manner and upon the terms and conditions
11 described in the Waste Supply Contract, is in the best interests
12 of the County. The failure so to provide for the Facility and
13 the disposal of the Guaranteed Annual Tonnage in order to dispose
14 of solid waste generated in the County can create serious
15 economic, environmental and public health problems.

16 (b) It is in the public interest of the County that the
17 Authority proceed with the negotiation and preparation of the
18 Financing Documents, and take all actions which the Authority, in
19 its discretion, deems to be necessary or appropriate for the
20 issuance and sale of the Bonds and for the execution and delivery
21 of the Project Documents and the Financing Documents by the
22 parties thereto.

23 (c) The Authority has engaged in a continuous competitive
24 procurement for the Facility, involving arrangements for the use
25 of the Facility by the County and providing for the construction,
26 operation and financing of the Facility in a cost effective
27 manner. As permitted and authorized by the Act, the County is
28 entering into contracts directly with the Authority to accomplish
29 and consummate the results of that competitive procurement.
30 Representatives of the County participated in the Authority's
31 negotiation process as part of a cooperative effort to serve the
32 best interests of the County. Moreover, in view of the

1 competitive nature of such procurement process, it would be
2 unnecessary, impracticable, inappropriate, infeasible and
3 disadvantageous for there to be any further competitive
4 procurement conducted by the County. Any such further competi-
5 tive procurement would be inadequate to develop, or assist in the
6 development of, the complex and inter-related form of the
7 transactions necessary to meet the goals and achieve the purposes
8 of the Authority and the County, taking into account the
9 competitive negotiations between the Qualified Vendors and the
10 exclusive, substantive negotiations to date with the Selected
11 Vendor necessary to achieve the form of the transactions for the
12 Facility. The nature of the transaction requires that the County
13 enter into a long-term Waste Supply Contract that provides for
14 the payment of funds beyond the current fiscal year. The
15 Authority has negotiated the Steam Purchase Contract with the
16 Army and in so doing has developed a unique market for energy
17 produced at the Facility.

18 (d) It is recognized that the Authority intends to enter
19 into contractual arrangements with the Company to provide for the
20 disposal of the Guaranteed Annual Tonnage at the Facility, or the
21 disposal of the Guaranteed Annual Tonnage otherwise as provided
22 in the Waste Supply Contract, and that the total cost of disposal
23 payable under the Waste Supply Contract would therefore include
24 amounts payable by the Authority to the Company with respect to
25 the County's Guaranteed Annual Tonnage under such contractual
26 arrangements. The County recognizes that the Tipping Fee in
27 effect from time to time also depends upon principal amount,
28 terms and the interest rate or rates of the Bonds and that the
29 Bonds may have a rate of interest as provided in the trust
30 indenture of the Authority pursuant to which the Bonds are
31 issued. This Ordinance authorizes the execution, without further
32 County Council action, of the Waste Supply Contract containing a

1 tipping fee with a component representing debt service (as
2 defined in the Waste Supply Contract) based on an initial
3 aggregate principal amount of bonds not to exceed Thirty-One
4 Million Dollars (\$31,000,000.00), so long as the annual debt
5 service on the date of execution thereof is Four Million
6 Twenty-Eight Thousand Dollars (\$4,028,000.00), or less in each
7 year (except the last year when a portion of the debt service is
8 to be paid from the funded reserves). This debt service
9 component is consistent with the fiscal impact statement
10 presented to the County Council in connection with this
11 Ordinance. This Ordinance also hereby authorizes the execution
12 of the Waste Supply Contract with a higher annual debt service
13 component to reflect actual interest rates on the bonds, changes
14 in principal repayment schedules or other terms of the bonds, if
15 the County Council, by resolution, approves the debt service and
16 terms of the Waste Supply Contract. This approving resolution
17 shall be effective on the date of its adoption. It is recognized
18 that the Tipping Fee is subject to adjustment in accordance with
19 the terms of the Waste Supply Contract. This Ordinance shall not
20 limit the obligations of the County set forth in the Waste Supply
21 Contract to pay the total cost of the Authority for the disposal
22 of the Guaranteed Annual Tonnage of the County as authorized by
23 the Act and described in the Waste Supply Contract.

24 Section 2. Be It Further Enacted By The County Council of
25 Harford County, Maryland, that the terms, provisions, form,
26 content and substance of the Waste Supply Contract are hereby
27 approved. A copy of the form of Waste Supply Contract has been
28 presented to the County Council and shall be placed in the
29 official records of the County and be made available for public
30 inspection at the office of the Director of Administration and
31 the office of the Secretary of the County Council. The County
32 Executive is hereby authorized on behalf of the County to execute

1 and deliver the Waste Supply Contract with an initial Guaranteed
2 Annual Tonnage (as defined therein) of 81,000 tons. The Waste
3 Supply Contract to be so executed and delivered shall be
4 substantially in the form hereby approved with (i) changes in
5 form or changes in content that do not materially adversely
6 affect the interests of the County thereunder and are approved by
7 the County Executive, his execution thereof to constitute
8 conclusive evidence of his approval of any and all changes or
9 revisions therein from the form of Waste Supply Contract hereby
10 approved, or (ii) with such other changes as may be approved by
11 resolution of the County Council. Any resolution adopted
12 pursuant to this Ordinance shall be effective upon approval by
13 the County Executive. Nothing herein shall preclude or limit the
14 authorization by resolution of the County Council of a Tipping
15 Fee in excess of the maximum Tipping Fee authorized and approved
16 herein.

17 Section 3. Be It Further Enacted By The County Council of
18 Harford County, Maryland, that the provisions of this Ordinance
19 are severable, and if any provision, sentence, clause, section or
20 part thereof is held illegal, invalid, unconstitutional or
21 inapplicable to any person or circumstances, such illegality,
22 invalidity, unconstitutionality or inapplicability shall not
23 affect or impair any of the remaining provisions, sentences,
24 clauses, sections or parts of this Ordinance or their application
25 to other persons or circumstances. It is hereby declared to be
26 the legislative intent that this Ordinance would have been
27 adopted if such illegal, invalid, unconstitutional or inapplica-
28 ble provision, sentence, clause, section or part had not been
29 included therein, and as if the person or circumstances to which
30 this Ordinance or any part thereof is inapplicable had been
31 specifically exempted therefrom. The powers conferred by this
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1 Ordinance are in addition to any powers conferred by any other
2 law and shall not limit or be limited by the provisions of any
3 other County law.

4 Section 4. Be It Further Enacted By The County Council of
5 Harford County, Maryland, that this Act is hereby declared to be
6 an Emergency Act, necessary for the protection of the public
7 health-and-shall-take-effect-on-the-date-it-becomes-law.

8 SECTION 4. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
9 HARFORD COUNTY, MARYLAND, THAT THIS ACT SHALL TAKE EFFECT SIXTY
10 (60) CALENDAR DAYS FROM THE DATE IT BECOMES LAW.

11 EFFECTIVE: December 24, 1985
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85-50

BY THE COUNCIL

AS AMENDED

BILL NO. 85-50 (as amended)

Read the third time.

Passed LSD 85-30 (October 24, 1985)

Failed of Passage _____

By order

Angela Markowski, Secretary

Sealed with the County Seal and presented to the County Executive
for his approval this 25th day of October, 1985
at 10:00 o'clock A.M.

Angela Markowski, Secretary

BY THE EXECUTIVE

APPROVED:

[Signature]
County Executive

Date 10-25-85

BY THE COUNCIL

This Bill (No. 85-50, as amended), having been approved by the
Executive and returned to the Council, becomes law on October 25, 1985.

Angela Markowski, Secretary

EFFECTIVE DATE: December 24, 1985

85-50

AS AMENDED